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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. 793

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Appellant,

vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, and MILWAUKEE ROAD COMMUTERS' ASSOCIATION,

Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

JURISDICTIONAL STATEMENT.

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IN THE

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OCTOBER TERM, 1958.

No.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

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vs.

STATE OF ILLINOIS, ILLINOIS COMMERCE COMMISSION, and MILWAUKEE ROAD COMMUTERS' ASSOCIATION,

Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

---

JURISDICTIONAL STATEMENT.

The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, appellant, submits herewith its jurisdictional statement showing that this Court has jurisdiction on appeal from the order entered by the District Court for the Northern District of Illinois, Eastern Division, on December 24, 1958, and that substantial questions are presented by the appeal.

I. Reference to Previous Decisions in this Cause.

The opinion of the United States District Court for the Northern District of Illinois, Eastern Division, pursuant to which the order here appealed from was entered, is reported at

State v. *United States*, 168 F. Supp. 706 (D.C. N.D., Ill. 1958)

and is appended hereto as Appendix A, at pages 1a-5a, hereof. The said order here appealed from is set forth herein as Appendix B, pages 6a-7a, hereof.

The Interstate Commerce Commission has entered two Reports in this cause which are reported as follows:

Chicago Intrastate Suburban Fares of Milwaukee Road, 297 I.C.C. 353 (1955);
idem, Docket No. 31742, decided October 31, 1958, ... I.C.C. .....

The latter decision is not yet reported and is set forth in Appendix C, at pages 8a-22a, hereof.

The Three-Judge District Court entered an opinion upon review of the first order of the Interstate Commerce Commission which is reported at

State of Illinois v. *United States*, 146 F.Supp. 195 (D.C.N.D. Ill. 1956).

On direct appeal from the decree of the District Court, entered pursuant to such opinion, this Court entered an opinion reported at

Chicago, M., St. P. & P. R. Co. v. *Illinois*, 355 U.S. 300, 78 S. Ct. 304, 2 L.Ed. 2d 292 (1958).

The decision of this Court on the application of this appellant for a stay or supersedeas is reported at

Chicago, M., St. P. & P.R. Co. v. *Illinois*, 356 U.S. 906, 78 S.Ct. 665, 2 L.Ed. 2d 573 (1958).

II. JURISDICTION.

This action was brought under 28 U.S.C., Section 1336, by the State of Illinois, Illinois Commerce Commission, and Milwaukee Road Commuters' Association to set aside

and enjoin enforcement of an order of the Interstate Commerce Commission which prescribed increased suburban fares for appellant. The duly appointed Three-Judge District Court entered its decree setting aside such order on June 14, 1956, and this appellant took a direct appeal therefrom to this Court. On June 18, 1956, an order was entered which provided that, pending such appeal, the appellant should continue to collect and impound certain suburban passenger fares and that the same should be refunded to the persons who paid them in the event the decree of the District Court should be affirmed. Said order also provided that reasonable expenses of the plaintiffs (including attorneys' fees) should be reimbursed to them from any amount remaining unclaimed after such refunding. This order is set out in Appendix D hereto, pages 23a-25a, hereof.

On September 12, 1958, such refunding having been completed, the appellant moved the District Court for distribution to it of the total fund which then remained unclaimed. The District Court denied this motion by order entered December 24, 1958.

Notice of appeal was filed January 23, 1959, in the District Court of the United States for the Northern District of Illinois, Eastern Division. Jurisdiction of this Court is conferred by 28 U.S.C., Sections 1253 and 2101(b). The following cases sustain the jurisdiction of this Court to review the District Court's order of December 24, 1958, on direct appeal:

Arkadelphia Co. v. *St. Louis S. W. Ry. Co.*, 249 U.S. 134, 39 S.Ct. 237, 63 L.Ed. 517 (1919);

B. & O. R. Co. v. *United States*, 279 U.S. 781, 49 S.Ct. 492, 73 L.Ed. 954 (1929);

Atlantic Coast Line v. *Florida*, 295 U.S. 301, 55 S.Ct. 713, 79 L.Ed. 1451 (1935);
Inland Steel Co. v. *U.S.*, 306 U.S. 153, 59 S.Ct. 415, 83 L.Ed. 557 (1939);
United States v. *Morgan*, 307 U.S. 183, 59 S.Ct. 795, 83 L.Ed. 1211 (1939).

III. QUESTIONS PRESENTED.

1. Whether the Three-Judge District Court erred in denying appellant's motion for distribution to it of certain impounded excess intrastate suburban fares which were:

(a) collected pursuant to an order of the Interstate Commerce Commission;

(b) impounded pursuant to an order of the District Court pending the first appeal of this cause to this Court; and which

(c) remain unclaimed after refunds of such excess fares have been made to those of appellant's patrons who presented valid claims therefor;

after which the Interstate Commerce Commission corrected the procedural defects in its first order and entered a valid second order which, like the first, prescribed an increase in appellant's intrastate suburban passenger fares.

2. Whether appellees' expenses, including attorneys' fees, may be taxed against such unclaimed, impounded excess fares.

3. Whether appellee, Milwaukee Road Commuters' Association, may resort to such unclaimed, impounded excess fares for payment of its attorneys' fees when the State of Illinois and Illinois Commerce Commission were parties plaintiff to all phases of the litigation of this cause and competently and effectively represented all suburban riders.

4. Whether the order of the Three-Judge District Court entered on June 18, 1956, under which such fares were collected and impounded was a final and favorable determination of the right of appellees to receive payment from the unclaimed balance of impounded excess fares in respect of their expenses and attorney' fees.

IV. STATEMENT OF THE CASE.

On November 21, 1955, the Interstate Commerce Commission found appellant's Illinois intrastate suburban passenger fares to be noncompensatory and to result in unlawful discrimination against interstate commerce under Sec. 13(4) of the Interstate Commerce Act, 49 U.S.C., Sec. 13(4). *Chicago Intrastate Suburban Fares of Milwaukee Road,* 297 I.C.C. 353 (1955) Upon the refusal of the Illinois Commerce Commission to permit an increase in such fares, the Interstate Commerce Commission, on March 2, 1956, ordered appellant to publish fares approximately 21 per cent higher than the fares which had been approved by the State.

This action was brought by the State of Illinois, Illinois Commerce Commission and Milwaukee Road Commuters Association to set aside the Commission's said order. A temporary restraining order was denied plaintiffs by the District Court on April 18, 1956, on condition that appellant, pending final determination of the proceeding, impound and hold in a separate fund the difference between the fares that became effective April 20, 1956, and those previously in effect. In *State of Illinois* v. *United States,* 146 F. Supp. 195 (D.C., N.D. Ill. 1956), the Three-Judge United States District Court set aside the Commission's order for (1) lack of a finding as to the amount which the intrastate suburban passenger traffic should contribute as its fair share of the system earnings; (2) in-

sufficiency of evidence to support the finding that the prescribed fares would be just and reasonable; and (3) lack of power or jurisdiction by the Commission to alter intrastate fares until the State Commission had first been afforded an opportunity to consider the same evidence and fix the fares on the same basis as presented to the Interstate Commerce Commission. The decree remanded the cause to the Interstate Commerce Commission for further proceedings not inconsistent with the District Court's opinion. It also enjoined compliance by appellant with the order of that Commission and required the immediate refund of the amount of the increase of such fares to the persons from whom collected.

Defendant filed its notice of appeal from this order, and the Three-Judge District Court entered an order on June 18, 1956, which stayed its decree on the condition that appellant, upon collection of such excess fares, continue to impound and hold them in such separate fund pending the disposition of the cause on appeal to this Court. This order provided that, in the event the decree of the District Court should be affirmed by this Court on appeal, the impounded excess fares should be refunded to those who paid them and appellees' reasonable expenses, including reasonable attorneys' fees, should be paid them from any unclaimed balance of the impounded excess fares.

In *Chicago, M., St.P. & P. R. Co.* v. *Illinois,* 355 U.S. 300, 78 S.Ct. 304, 2 L.Ed. 2d 292 (1958), this Court held the Commission's order defective for lack of findings taking the deficit from the intrastate suburban service into account in the light of revenue produced by other intrastate freight and passenger traffic in Illinois. At 355 U.S. 312, 2 L.Ed. 2d 301, the decree of the District Court was:

". . . modified to provide that the remand to the ICC shall be for further proceedings not inconsistent with this opinion."

On February 10, 1958, appellant moved the lower court for a further stay of the decree of June 14, 1956, and an order directing the continued impounding of excess fares, pending the further proceedings on remand to the Interstate Commerce Commission.

On February 28, 1958, this motion was denied and the Three-Judge Court, orally from the bench, instructed appellant to forthwith begin refunding the excess fares. On March 3, 1958, appellant filed a notice of appeal from this order and a motion for a stay or supersedeas pending such appeal. The District Court denied the motion without opinion. Appellant thereupon made application to this Court for a stay or supersedeas; it was denied in *Chicago, M., St. P. & P. R. Co.* v. *Illinois*, 356 U. S. 906, 78 S.Ct. 665, 2 L.Ed. 2d 573 (1958), four Justices dissenting.

On the denial of this application appellant immediately commenced to refund the excess fares to the persons from whom collected, pursuant to the order of June 18, 1956. A "Report on Refunding of Excess Fares" was filed in this cause and approved by the District Court on September 12, 1958. It indicated that on August 28, 1958, the date as of which appellant was ordered to report to the District Court regarding the progress of such refunding, there remained unclaimed by the persons from whom collected the amount of $229,565.51.

Also on September 12, 1958, appellant filed a motion in the District Court seeking distribution to it of the whole amount of the unclaimed excess fares. Briefs were submitted and on December 19, the Three-Judge District Court entered its opinion denying such motion. *State* v.

United States, 168 F. Supp. 706 (D.C., N.D. Ill. 1958). Pursuant thereto the lower court, on December 24, 1958, entered the order here appealed from. Such order denied appellant's motion, granted leave to plaintiffs to file their petitions for an allowance of expenses and attorneys' fees to be taxed against such unclaimed excess fares and provided that the amount remaining after such allowances should be paid to appellant under the doctrine of *Atlantic Coast Line* v. *Florida,* 295 U.S. 301, 55 S.Ct. 713, 79 L.Ed. 1451 (1935).

On January 23, 1959, the appellant filed with the District Court its Notice of Appeal to this Court. On the same date it also filed a notice of appeal to the United States Court of Appeals for the Seventh Circuit. Both appeals are from the order last above-said. Both raise identical questions. The appellant will submit to the Court of Appeals a motion seeking continuance of that appeal, pending a decision by this Court as to whether it has jurisdiction to hear this appeal.

V. THE QUESTIONS ARE SUBSTANTIAL.

1. The Court below ruled that appellant is not entitled to receive all unclaimed impounded excess fares, collected pursuant to an order of the Interstate Commerce Commission, notwithstanding that the Commission entered a second order correcting the procedural infirmities of its first order and again prescribing an increase in appellant's intrastate suburban fares. Such action of the lower court is contrary to this Court's decisions in *Atlantic Coast Line* v. *Florida,* 295 U.S. 301, 55 S.Ct. 713, 79 L.Ed. 1451 (1935); *Inland Steel Co.* v. *U.S.,* 306 U.S. 153, 59 S.Ct. 415, 83 L.Ed. 557 (1939); and *United States* v. *Morgan,* 307 U.S. 183, 59 S.Ct. 795, 83 L.Ed. 1211 (1939).

As stated in the *Morgan* decision just quoted, at 307 U.S. 191, 83 L.Ed. 1217:

> ". . . in exerting its extraordinary powers to stay execution of a rate order, and in directing payment into court of so much of the rate as has been found administratively to be excessive, it assumes the duty of making disposition of the fund in conformity to equitable principles."

If the equitable principles there referred to have meaning at all, they indicate that, since the first order of the Commission was adjudged invalid only because of a procedural omission, appellant possesses an equitable right to retain the unclaimed excess fares collected under an otherwise proper order of the Commission, which right was affirmed by the Commission's second order.

2. Another substantial question is whether the ground of this Court's decision in *Chicago, M., St. P. & P. R. Co.* v. *Illinois,* 355 U.S. 300, 78 S.Ct. 304, 2 L.Ed. 2d 292 (1958), was procedural or substantive in nature. If procedural within the purview of the *Atlantic Coast Line* and *Morgan* cases, the Commission's second order of October 31, 1958, Appendix C hereof, affirming its earlier finding that the fares were discriminatory, necessarily conferred upon appellant, under the cited decisions, the right to retain the unclaimed impounded fares.

3. A further substantial question raised on this appeal is the effect of the agreed order of June 18, 1956. The decree of the Three-Judge Court entered on June 14, 1956, provided that appellant's suburban passenger fares should revert immediately to the prior lower level. Pending the appeal from the District Court to this Court from such decree, appellant was permitted to continue collecting the increased fares on the express condition that such

fares be refunded in the event the decree was affirmed. Appellant agreed to this order so that the excess fares which might have been collected in the interim should not be irretrievably lost to it in the event this Court reversed the decree. As Mr. Justice Frankfurter stated, with the concurrence of Justices Burton, Harlan and Whittaker, in the dissent from the decision of the majority of this Court which denied appellant's application for a stay or supersedeas, *Chicago, M., St. P. & P. R. Co.* v. *Illinois*, 356 U.S. 906, at 908-909, 78 S.Ct. 665, 2 L.Ed. 2d 573, at 576 (1958):

> "In the first place, it is not at all clear that by their agreement the parties contemplated distribution of the fund in the circumstances that in fact came to pass. Although as a verbal matter it is arguable that the judgment of the District Court was 'affirmed,' our judgment was based on grounds substantially different from those of the District Court. The judgment of this Court by no means finally determined the legality of the intrastate fares. It looked to further proceedings before the Commission that may well result in a valid order finding the fares discriminatory. Moreover, petitioner could not, by its agreement, bargain away the rights of the public, or relieve the court from its obligation to frame a decree that would implement the policy of the Federal Act protecting the revenues of interstate carriers. No more can such an agreement relieve this Court of its duty to do substantial justice, insofar as that is within the power of a court, between the contending interests in the litigation."

Thus the question is raised whether appellant's agreement to the order of June 18, 1956, foreclosed its right to receive the whole of the unclaimed impounded fund, despite the subsequent entry of the Commission's second order of October 31, 1958.

4. A substantial question is presented whether the Three-Judge District Court, although recognizing the doctrines of the *Atlantic Coast Line* and *Morgan* cases relative to the impounded funds which will remain after the taxation of expenses and attorneys' fees, erred in refusing to acknowledge that those rulings apply to the whole of such fund prior to any such taxation. Those decisions apply to the whole fund, and the District Court, having recognized them, erred in denying appellant's motion for distribution to it of the total unclaimed impounded fund.

5. Still another substantial question raised here is whether the law sanctions the taxation of appellees' expenses and attorneys' fees against the fund now in the custody of the District Court. Appellant would not deny that such an allowance is entirely proper when the circumstances presented are such as those in *Trustees* v. *Greenough*, 105 U.S. 527, 26 L.Ed. 1157 (1882), and *Sprague* v. *Ticonic Bank*, 307 U.S. 161, 59 S.Ct. 777, 83 L.Ed. 1184 (1939), but those decisions turned on the theory that the persons who benefited from the attorneys' services should each contribute their proportionate share of the cost of such services from their respective portions of the fund. The equitable principle involved was that of quasi contract, unjust enrichment.

That principle cannot be applied in the instant case. The effect of the lower court's order is to tax appellees' expenses and attorneys' fees against what remains of a fund which already has been distributed irrevocably to the fullest possible extent. Those who received a refund through counsels' services will not be required to contribute their respective shares of the expenses and attorneys' fees incurred by appellees. Such facts do not resemble the *Greenough* and *Sprague* cases. Since the Three-Judge District Court has recognized that appellant is entitled to

receive the balance of the presently unclaimed fund after allowance of appellees' expenses, appellant, and not those who benefited from counsels' services, will be required to pay appellees' expenses and attorneys' fees.

VI. CONCLUSION.

The questions presented by this appeal are substantial in that the authority of several decisions of this Court are threatened by the contrary decision and orders of the lower court. This Court should accord plenary consideration to the questions raised by this appeal, with briefs on the merits and oral arguments for their resolution. Probable jurisdiction should be noted.

Respectfully submitted,

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Chicago, Milwaukee, St. Paul
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Chicago 6, Illinois
March 23, 1959

APPENDIX A.

IN THE

DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois
Eastern Division

State of Illinois, Illinois Commerce Commission, and Milwaukee Road Commuters' Association, Plaintiffs, v. United States of America, Interstate Commerce Commission, and Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Defendants.	No. 56 C 681

MEMORANDUM.

Before ELMER J. SCHNACKENBERG, Circuit Judge, and PHILIP L. SULLIVAN and WALTER J. LABUY, District Judges.

SCHNACKENBERG, Circuit Judge. On September 12, 1958, defendant Chicago, Milwaukee, St. Paul & Pacific Railroad Company, a corporation, hereinafter called the Milwaukee Road, filed its motion for distribution to itself, for its own general use, the total amount of excess fares now remaining unclaimed by, and unrefunded to, the persons from whom collected, now amounting (it is said) to the sum of $229,565.51; and Milwaukee Road Commuters' Association, one of the plaintiffs herein, has filed an answer to said motion, denying that the Milwaukee Road is entitled to the balance now in said fund and asserting that the Milwaukee Road should be required to deposit the balance of said fund with the clerk of this court to be used to pay to plain-

tiffs their reasonable expenses incurred in connection with this litigation.

Provision for the establishment of the fund in question was made by this court's order of June 18, 1956, which provides:

> "This cause coming on to be heard on motion of Chicago, Milwaukee, St. Paul & Pacific Railroad Company (herein referred to as 'the Milwaukee Road') one of the defendants herein, for the entry of an order staying the injunction prescribed by decree of this court entered June 14, 1956, pending the hearing of said cause on appeal before the Supreme Court of the United States, it appearing to the court that due and proper notice of the time and place for presentation of said motion has been served on all the attorneys of record and it further appearing to the court that Notice of Appeal from the decree entered by this Court on June 14, 1956, has been duly served and filed and the Court being fully advised in the premises,
>
> "It Is Ordered:
>
> "1. The injunction prescribed by decree of this Court entered June 14, 1956, is stayed pending disposition of the appeal from that decree, heretofore taken to the Supreme Court of United States, and subject to the conditions below set forth.
>
> "2. The excess fares collected by the Milwaukee Road after April 20, 1956, pursuant to order of the Interstate Commerce Commission set aside by the decree, shall be impounded and held by the Milwaukee Road in a separate fund so that in the event the decree is affirmed, or the appeal therefrom is dismissed or discontinued, the excess fares may be refunded to the persons who paid them. The Milwaukee Road shall issue suitable coupons or other evidence to such persons showing their payment of the excess fares.

"3. If the decree is reversed and injunction dissolved, the Milwaukee Road shall retain the impounded excess fares and may transfer them to its general funds.

"4. If the decree is affirmed or the appeal is dismissed or discontinued, the Milwaukee Road shall post immediately in its suburban stations, notice that refund will be made of the excess fares to the persons who have paid them.

"5. Six months after the posting of such notice, the Milwaukee Road shall file a report in this court setting forth the total amount of the excess fares impounded, the total amount of refunds made therefrom, and the balance of the impounded excess fares then unclaimed. At the same time, the Milwaukee Road shall deposit with the Clerk of this Court the amount of such unclaimed balance.

"6. Thereupon, upon petition of plaintiffs, and evidence showing reasonable expenses (including reasonable attorneys' fees) incurred by each of the plaintiffs in the proceeding before the Interstate Commerce Commission, reviewed in this case, in prosecuting this case in this Court, and in connection with the appeal from the decree herein, the Court shall order that the amount of said reasonable expenses shall be paid to plaintiffs from the unclaimed balance of the impounded excess fares. Any remaining balance shall be retained by the Clerk subject to such disposition as this Court may direct.

"7. The Court retains jurisdiction of this case to enter such further orders as may be required to carry this order into effect."

According to the records of this court, the balance of said fund, in the sum of $229,565.51, was paid to the clerk of this court on September 16, 1958, and is now on deposit in a Chicago bank.

The order of June 18, 1956, is an agreed order and was entered upon motion of the Milwaukee Road.[1] No appeal has been taken from that order and, of course, no appeal could have been taken therefrom.

Exhaustive briefs have been filed and considered by this court.

The agreed order of June 18, 1956, was a final and favorable determination of the right of plaintiffs to receive payment from the unclaimed balance of impounded excess fares covering their reasonable expenses (including reasonable attorneys' fees) incurred by each of them as referred to in said order. The only reservation of jurisdiction in regard thereto was for the purpose of entering such further orders as may be required to carry that order into effect. However, in order that plaintiffs may take advantage of the provisions of that order in this respect, they must petition this court and submit evidence showing reasonable expenses incurred by each of them and the

---

[1] Before this court on February 28, 1958, the following colloquy occurred:

"Judge Schnackenberg. ** * We entered an order on June 18, 1956, providing for the impounding of money constituting the excess, alleged excess, fares to be paid by persons using the Milwaukee Road in suburban service. Was there any objection entered to the entry of that order, or was it an agreed order?

Mr. Guthrie: There was no objection. It was an agreed order, your Honor.

Judge Schnackenberg: Is that right, counsel?

Mr. Eckersall: That is right, your Honor.

Judge Schnackenberg: 'That is correct'. Mr. Eckersall answered for the railroad.

Mr. Eckersall: Your Honor, as I recall, counsel for plaintiff prepared the order. We had prepared one form of order, and they prepared the form that was entered.

Judge Schnackenberg: The order was entered upon the motion of counsel for the railroad.

Mr. Eckersall: That is correct, sir. * * *"

amount. For that reason, counsel for plaintiffs are directed to prepare and, after due notice, submit to this court for entry, an order granting plaintiffs leave to file within ten days thereafter, a petition or petitions, together with proper affidavits showing in detail the reasonable expenses (including reasonable attorneys' fees) incurred by each of them, and which order shall give leave to defendants, or either of them, to file within ten days after the filing of each said petition, an answer to said petition, together with such counter-affidavits as defendants may deem necessary.

The said order shall provide further that this court reserves jurisdiction to finally adjudicate upon said petition or petitions and to dispose of said entire fund.

As to any balance remaining in said fund after it has been reduced by the payment of any such reasonable expenses (including reasonable attorneys' fees) as aforesaid, we hold that said balance shall be paid to the Milwaukee Road (*Atlantic Coast Line Railroad Co.* v. *State of Florida,* 295 U.S. 301, 55 S.Ct. 713, 79 L.Ed. 1451). Provision, therefore, shall be included in the order which we have hereinabove directed counsel for plaintiffs to submit to this court.

APPENDIX B.

IN THE

DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois
Eastern Division

State of Illinois, Illinois Commerce Commission, and Milwaukee Road Commuters' Association, Plaintiffs, v. United States of America, Interstate Commerce Commission, and Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Defendants.	No. 56 C 681

ORDER.

This cause coming on to be heard on motion of Chicago, Milwaukee, St. Paul and Pacific Railroad (herein referred to as "the Milwaukee Road"), one of the defendants herein, for an order permitting distribution to it of the fund of $229,565.51 unclaimed impounded excess fares, and the Court having received briefs of counsel and being fully advised in the premises,

It Is Ordered

1. The motion of the Milwaukee Road for an order permitting distribution to it of the fund of $229,565.51 unclaimed impounded excess fares is denied.

2. Plaintiffs may file with this Court a petition or petitions, together with affidavits showing in detail the reason-

able expenses (including reasonable attorneys' fees) incurred in the proceeding before the Interstate Commerce Commission, reviewed in this case, in prosecuting this case in this Court, and in connection with the appeal from the decree herein. Any such petition shall be filed by January 5, 1959.

3. Defendants, or any of them, may file an answer to any such petition and such counter-affidavits as defendants may deem necessary. Any such answer shall be filed by January 15, 1959.

4. Any balance remaining in such fund after payment of any such reasonable expenses of plaintiffs (including reasonable attorneys' fees) shall be paid to the Milwaukee Road.

5. This Court reserves jurisdiction to adjudicate finally upon said petition or petitions and to dispose of said entire fund.

ENTER :

_____

Circuit Judge

_____

Judge

_____

Judge

Dated: December 24, 1958

APPENDIX C.

[Sh. 1]

INTERSTATE COMMERCE COMMISSION

No. 31742[1]

CHICAGO INTRASTATE SUBURBAN FARES OF MILWAUKEE RAILROAD

Decided October 31, 1958.

Upon further hearing, pursuant to the opinion of the Supreme Court, 355 U.S. 300, found that respondent's intrastate fares within its Chicago, Ill., suburban area result in unjust discrimination against and an undue burden on interstate commerce. Intrastate fares prescribed to remove the unlawfulness. Outstanding orders in No. 11703 modified accordingly. Prior report, 297 I.C.C. 353.

Edwin R. Eckersall, R. K. Merrill, and Joseph J. Nagle for respondent.

H. R. Begley, Latham Castle, and W. J. Sheridan, Jr. for Illinois Commerce Commission.

Francis D. Fisher and S. Ashley Guthrie for protestant Milwaukee Commuters Association.

REPORT OF THE COMMISSION ON FURTHER HEARING BY THE COMMISSION:

This is an investigation, instituted upon petition of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, to determine whether its intrastate fares within its Chicago, Ill., suburban area, embracing points between and including Walworth, Wis., and Elgin, Ill., on

[1] This report embraces also, on further hearing, No. 11703. *Intrastate Rates Within Illinois*, 59 I.C.C. 350.

the one hand, and Chicago Union Station, on the other, made or imposed by the Illinois Commerce Commission, cause any undue or unreasonable advantages, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and in interstate commerce, on the other, or any undue, unreasonable, or unjust discrimination against interstate commerce, and to determine what fares, if any, or what maximum or minimum fares, should be prescribed to remove any unlawfulness that may be found to exist. The investigation also includes the question of whether the outstanding orders in No. 11703, *Intrastate Rates Within Illinois*, 59 I.C.C. 350, should be further modified.

*[Sh. 2] *In the prior report, 297 I.C.C. 353, we found that, based on the year 1954, the respondent's suburban operations were operated at an out-of-pocket deficit, excluding return, of $306,038, and required its suburban fares to be increased, under a finding of undue, unreasonable, and unjust discrimination against interstate commerce, to bases estimated to yield about $77,000 per annum above its out-of-pocket costs, as a minimum contribution to its indirect costs and taxes. Our order was enjoined by the District Court for the Northern District of Illinois, Eastern Division, 147 F. Supp. 195, which remanded the case to us for further proceedings not inconsistent with its opinion. On appeal, 355 U.S. 300, the Supreme Court affirmed on the ground that we had made no findings as to the total of the indirect costs and taxes to which the contribution was to be made, and had made no findings which took into account the deficit from the suburban service, "in the light of the carrier's other intrastate revenues from Illinois traffic, freight and passenger." The Supreme Court modified the judgment of the District Court, and the remand to us called for

further proceedings not inconsistent with the Supreme Court's opinion.

Accordingly, we reopened the proceeding for further hearing, which was held in Chicago, Ill., on April 10 and 11, and May 14, 1958. The Illinois Commerce Commission and the Milwaukee Road Commuters Association appeared, cross-examined the respondent's witnesses, and adduced evidence in opposition. By agreement of the parties, the respondent filed an opening brief, the protestants a reply brief, and the respondent a closing brief; and the matter was submitted to us on exceptions, and replies, to the proposed report. Exceptions and requested findings not herein specifically discussed have been considered and found not justified.

*[Sh. 3] *For the year ending October 31, 1957, the latest period available, the total revenue from this service was $1,941,383, from which should be deducted headend revenue of $32,284 and revenue from through passengers of $50,509, resulting in net revenue from suburban revenue passengers of $1,858,590. The out-of-pocket expenses, excluding return, of this operation totaled $2,758,230, from which should be deducted the estimated expense of the headend traffic of $42,616, and a revenue credit for handling nonrevenue nonsuburban passengers of $164,226, resulting in a net out-of-pocket expense of $2,551,388, or an out-of-pocket deficit from the handling of suburban revenue passengers of $692,798. In addition to the out-of-pocket costs, the net indirect costs and taxes assigned to this traffic were $1,184,742, or fully-distributed costs, exclusive of return, of $3,736,130, resulting in a total deficit of $1,877,540.

Protestants criticize the respondent's estimate of the headend expenses because it is less than the 3.2 percent ratio used in its 1954 study, but this is due to the reduced

volume of mail handled on the suburban trains with its concomitant reduction in the number of headend cars. Protestants would also adjust upward the above-mentioned revenue credit to reflect present-day costs, but this credit was based on the level of 1954 fares which are still in effect and were in effect during the study year, so that no upward adjustment is appropriate.

During the 12 months' period ending October 31, 1957, the respondent's total revenue from its Illinois intrastate freight service was $2,637,781, and from its Illinois intrastate passenger service other than suburban it was $84,535. On a fully-distributed basis, exclusive of return, it incurred a deficit from these operations of approximately $230,158 on freight service and *$56,798 on pas-
*[Sh. 4] senger service other than suburban, or a total of $286,956. This computation is based on the actual revenues from the Illinois intrastate traffic, except for reciprocal and interterminal switching for which no separation between interstate and intrastate traffic was available. On interterminal switching, where the respondent performs the switching in connection with a switching movement of another railroad, all of the revenue was assigned to intrastate traffic, although a small proportion of the total traffic moves in interstate commerce. On the other hand, on reciprocal switching where the respondent performs a switching service in connection with a line-haul movement of another railroad, all of the revenue was assigned to interstate traffic, although a small portion of the total traffic moves in intrastate commerce. The line-haul expenses were generally apportioned between interstate and intrastate on a train-mile, ton-mile, or passenger-mile basis, and the terminal expenses on a per car or per passenger basis.

Protestants contend that the freight expenses should have been apportioned on a revenue basis. This ignores the fact that the expenses are incurred in terms of different services or work units, such as the switching of cars, the handling of ton-miles, etc. They point out also that the respondent's apportionments did not reflect the practice followed in its reports to the Illinois Commission prior to 1957. This relates principally to revenues from switching operations and joint facilities. Prior to 1957, the respondent made no segregation of such revenues between Illinois intrastate and Illinois interstate. Instead, such revenues were all classified for accounting convenience as intrastate. Because it seemed "necessary "[Sh. 5] by reason of the above-mentioned Supreme Court decision, the respondent has undertaken to make such a segregation in this proceeding.

It is contended also by the protestants that the terminal expenses incurred on interstate traffic passing through the State, but with primary origin and ultimate destination outside the State, should be apportioned over the entire length of the haul. There is merit in this contention, but it goes to the relative cost of Illinois interstate and other interstate traffic and not to the propriety of the respondent's apportionments to Illinois intrastate traffic.

In the performance of transportation service, intrastate and interstate revenue traffic are inextricably commingled in the same trains. This applies as well in freight-train service as in passenger-train service. Both characters of traffic are propelled by the same motive power, over the same roadway and track facilities, employing the same signalling devices and station facilities, under the control of a single crew operating under a single set of orders or centralized train control. The commingling of the traffic

in through passenger-train service is brought about by the further fact that intrastate passengers utilize the same cars as interstate passengers. Mail, express, and other so-called headend traffic utilize the same cars for both intrastate and interstate traffic.

The apportionments to the Illinois intrastate traffic were made by the respondent's chief statistician, who has had 36 years' experience in the railroad accounting field. These apportionments present a problem of unusual difficulty, and must needs rest in part upon uncertain bases. They may be accepted as rough approximations only.

This is not fatal for the *respondent, however, *[Sh. 6] especially in view of the fact that the Transportation Act of 1958 specifically provides that we may exercise our power under section 13, "without a separation of interstate and intrastate property, revenues, and expenses, and without considering in totality the operations or results thereof of any carrier, or group of carriers wholly within any State."

The protestants show that according to its report to the Illinois Commission, the respondent incurred a deficit in 1957 in net railway operating income from its system passenger operations of $20.2 million, or 2.94 cents a passenger-mile; from its Illinois passenger-train operations, other than suburban, a deficit of $3.5 million, or 3.42 cents a passenger-mile; and from its suburban operations, during the 12 months ending October 31, 1957, the unadjusted deficit was $2 million, or 1.68 cents a passenger-mile. Stress is laid upon the relative deficits per passenger-mile. However, the operating ratios, which reflect the ratio of revenues to expenses, are more significant. Based on protestants showing, these were 168 percent on the respondent's entire passenger traffic, 177 percent on its

Illinois passenger traffic, other than suburban, and 201 percent on its suburban traffic. The adjusted operating ratio on the latter was 185 percent It thus appears that the statement at page 359 of the prior report that "the deficit from the respondent's total passenger operations is relatively greater than from its suburban operations" is no longer true.

The total value of the respondent's property devoted to the transportation service is $1,166,081,150, of which $137,290,917 is devoted to its operations in Illinois and about $9 million to its suburban operations. Its rate of return on net investment in its entire operations in 1957 was only 2.13 percent, as *compared with an average *[Sh. 7] of 3.35 percent for all class I railways of the United States.

To the extent that the respondent's intrastate suburban fares are not producing sufficient earnings to cover the out-of-pocket cost of the service plus a fair share of the respondent's revenue needs; that is, of its indirect costs, taxes, and return on investment, they are discriminatory, revenuewise, against the respondent's interstate traffic as a whole.

The best test of what this suburban traffic can and should reasonably yield above its out-of-pocket costs is derived from a comparison with the suburban fares approved by the Illinois Commission for the Chicago, Rock Island and Pacific Railroad Company, whose operations are also completely dieselized and appear to be substantially similar to those of the respondent. The fares of the Rock Island are neither the lowest nor the highest in the Chicago suburban area. At the present time, the respondent's fares are the lowest in the area, being substantially lower than even the local fares of the Chicago Transit

Authority. Fares on the Rock Island level, modified to reflect a 25-cent minimum fare and holddowns on commutation fares to more distant points, would produce an increase in revenue to the respondent of approximately $798,170 a year, or 42 percent, resulting in a contribution of only $105,372, or about 9 percent, to the indirect costs and taxes properly allocable to this traffic. In the light of the rapid growth and population in the respondent's suburban territory and the steady increase in its patronage since 1940, little or no loss of traffic would result from an increase to the modified Rock Island level reflected in our findings herein.

We have recognized in general freight rate in-
[Sh. 8] crease proceedings, at least since Ex Parte No. 103, *Fifteen Percent Case, 1931,* 178 I.C.C. 539, that if the passenger service inevitably and inescapably cannot bear its direct cost and its share of joint or indirect costs, the deficiency may be taken into account in determining the amount of the general increase in freight rates. In other words, we have recognized that such sufficiency, until it can be eliminated, is in a sense a part of the railroads' overhead burden to which the freight service must make some contribution. However, we have also recognized that no segment of the passenger-train service may be excused from contributing the greatest possible earnings consonant with adequate service and reasonable charges, and that the railroads must exercise every legitimate effort to place each segment on a more nearly compensatory basis. See No. 9200, *Railway Mail Pay, Application of Eastern Railroads, 1956,* decided June 23, 1958.

The deficits from the suburban segments of rail passenger-train operations have presented a particularly acute problem since World War II, such segments being

in certain instances both interstate and intrastate, and in other instances principally interstate or intrastate. In numerous proceedings since 1946, we have approved increases in suburban fares so that the traffic contributed all that it reasonably could to *its indirect costs *[Sh. 9] or at least minimized deficits therefrom.[1] Many of these proceedings were handled jointly with State regulatory bodies and included the disposition of issues with respect to intrastate fares under section 13. In two of these proceedings where, as here, we were unable to arrange joint hearings with State regulatory body and had to resort to affirmative orders under section 13, our orders were sustained by the statutory courts, whose actions were affirmed *per curiam* by the Supreme Court. *New York State Commutation Fares, New Haven Railroad,* 279 I.C.C. 151, sustained 98 F. Supp. 855, affirmed *per curiam,* 342 U. S. 882; and *Illinois Central Multiple Fares in Chicago Area,* 281 I.C.C. 537, sustained 101 F. Supp. 36, affirmed *per curiam,* 342 U. S. *[Sh. 10] 930. *Here, as in the other suburban-fare proceedings, the respondent's suburban service can-

[1] *Commutation Fares Between New Orleans and Gulf Coast,* 270 I.C.C. 291 (1948); *Jersey Central Commutation Fares,* 273 I.C.C. 693 (1949); *New Jersey-New York Commutation Fares,* 277 I.C.C. 459 (1950); *Commutation Fares Between New Orleans and Mississippi,* 278 I.C.C. 567 (1950); *Commutation Fares, Eastern Railroads,* 278 I.C.C. 491 (1950); *New York Central Commutation Fares, Chicago and Indiana,* 279 I.C.C. 188 (1950); *Commutation Fares Between Chicago and Wisconsin,* 279 I.C.C. 773 (1950); *New York State Commutation Fares, New Haven Railroad,* 279 I.C.C. 151 (1950); *Chicago, South Shore & South Bend Railroad Fares,* 279 I.C.C. 663 (1950); *Commutation Fares, New York, S.&W.R. Co.,* 280 I.C.C. 31 (1951); *Commutation Fares Between D.C., Md., Pa., W. Va.,* 280 I.C.C. 669 (1951); *Illinois Central Multiple Fares in Chicago Area,* 281 I.C.C. 537 (1951), 283 I.C.C. 133 (1953); *Commutation Fares, B.&M. R.R.,* 283 I.C.C. 214 (1951), 286 I.C.C. 494 (1952); *Increased Passenger Fares, C.N.S.&M. Ry. Co.,* 284 I.C.C. 221 (1952); *Commutation Fares in C.F.A. & T.I. Territories,* 284 I.C.C. 129 (1952), 288 I.C.C. 117 (1953); *Commutation and Multiple Fares, Illinois and Wisconsin,* 288 I.C.C. 15 (1953); *Jersey Central Intrastate Commutation Fares,* 288 I.C.C. 47 (1953); *Commutation Fares Between New Orleans and Mississippi Gulf Coast,* 288 I.C.C. 735 (1953); *Fares, C.A.A. S.B. R.R.,* 291 I.C.C. 665 (1954); *New Jersey Commutation Fares,* 293 I.C.C. 562 (1954); *Commutation Fares Between N.Y., N.J., Pa.,* 297 I.C.C. 53 (1955); *Increased Commutation Fares, New Haven Railroad,* 1956, 298 I.C.C. 741; *Illinois Central Suburban Fares,* 300 I.C.C. 53 (1957); *Increased Commutation Fares, N.Y., N.J., Pa.,* 302 I.C.C. 125 (1957).

not be said to be a service which "inevitably and inescapably cannot bear its direct costs and a fair share of its joint or indirect costs," and, in any event, the deficiency therefrom cannot be said to be made up by its other Illinois intrastate operations which are themselves being conducted at a deficit on a fully-distributed basis, exclusive of return. Moreover, it may not be assumed that the respondent's freight traffic, either interstate or intrastate, at least with the increase recently authorized in Ex Parte No. 212, *Increased Freight Rates, 1958,* 302 I.C.C. 665, ... I.C.C. ....., and related State proceedings, is not bearing all that it reasonably can bear above its out-of-pocket costs. Considering the low rate of return of the respondent on its entire operations, the principal effect of the failure of this suburban traffic to do likewise has been and will be to hamper the respondent, *pro tanto,* in performing adequate service in both interstate and intrastate commerce. Whatever adjustments, if any, may or should be made in the respondent's freight rates, the freight shippers should not be called upon to bear a deficiency from this suburban service which can reasonably be borne by the suburban riders.

Upon further hearing, we find:

1. That the respondent's present suburban fares made or imposed by authority of the State of Illinois are abnormally low and do not produce sufficient revenue to cover the out-of-pocket cost of the service nor a fair share of the respondent's revenue needs.

2. That the respondent's suburban fares cause and, unless increased to the extent herein set forth, [Sh. 11] will continue to cause undue, unreasonable, and unjust discrimination against, and an undue burden on, interstate commerce, in violation of section 13(4) of the Interstate Commerce Act.

3. That such undue, unreasonable, and unjust discrimination and undue burden can and should be removed by establishing for such intrastate travel fares no lower than the bases set forth as prescribed in the appendix hereto.

4. That the fares, as so increased, will produce additional revenue of about $798,170 a year, which is the approximate measure of the revenue discrimination against interstate commerce resulting from the respondent's present suburban fares and the additional amount necessary for such fares to make a fair contribution to the respondent's indirect costs and return on investment.

5. That increased fares will be just and reasonable for the future, and are necessary to enable the respondent, under honest, economical, and efficient management, to provide adequate and efficient service at the lowest cost consistent with the furnishing of such service.

6. That the outstanding orders in No. 11703 should be modified accordingly.

An appropriate order will be entered.

FREAS, *Chairman*, concurring:

I did not subscribe to that portion of the original report which prescribed fares higher than those sought. At the further hearing, the respondent submitted as necessary a somewhat higher level of fares than originally prescribed by the majority. The new level is herein found to be justified and I agree.

*[Sh. 12] *COMMISSIONER ARPAIA, being necessarily absent, did not participate in the disposition of this proceeding.

COMMISSIONER WEBB did not participate in the disposition of this proceeding.

*[App. Sh. 1] *APPENDIX

Unrestricted Monthly Computation Fares,
Present and Prescribed

Between Chicago (Union Sta.), Ill., and—	Distance	FARES Present	Prescribed
Western Division	*Miles*		
Hermosa, Ill.	6.1	$ 7.20	$15.00
Cragin, Ill.	7.2	8.40	15.00
Hanson Park, Ill.	7.9	9.60	15.00
Galewood, Ill.	8.8	10.20	15.00
Mars, Ill.	9.3	10.20	15.00
Mont Clare, Ill.	9.7	10.80	15.55
Elmwood Park, Ill.	10.4	10.80	15.60
River Grove, Ill.	11.6	11.80	16.25
Franklin Park, Ill.	13.4	12.30	17.70
Manneheim, Ill.	14.2	12.80	18.40
Bensenville, Ill.	17.4	14.30	20.60
Wooddale, Ill.	19.3	15.20	21.90
Itasca, Ill.	21.2	16.00	23.00
Medinah, Ill.	23.2	16.80	23.70
Roselle, Ill.	24.6	17.60	25.20
Ontarioville, Ill.	28.6	19.20	27.60
Bartlett, Ill.	30.3	19.60	28.50
Spaulding, Ill.	32.9	20.80	29.90
Elgin, Ill.	36.8	22.40	32.05

Northern Division

Healy, Ill.	6.4	$ 7.20	$15.00
Grayland, Ill.	8.2	9.60	15.00
Mayfair, Ill.	9.0	10.20	15.00
Forest Glen, Ill.	10.2	10.80	15.30
Edgebrook, Ill.	11.3	11.30	16.25
Morton Grove, Ill.	14.3	12.80	18.40
Golf, Ill.	16.2	13.80	19.85
Glenview, Ill.	17.4	14.30	20.60
Techny, Ill.	20.3	15.60	22.45
Northbrook, Ill.	20.9	16.00	22.90
Deerfield, Ill.	23.9	17.20	24.90
West Lake Forest, Ill.	28.0	18.80	27.30
Rondout, Ill.	32.3	20.40	29.60
Libertyville, Ill.	35.5	22.00	31.35
Grays Lake, Ill.	41.0	24.00	34.50
Round Lake, Ill.	44.0	25.20	36.30
Long Lake, Ill.	46.0	26.00	37.10
Wilson Road, Ill.	46.7	26.40	37.50
Ingleside, Ill.	47.8	26.80	37.90
Fox Lake, Ill.	49.5	27.60	38.70
Spring Grove, Ill.	53.7	29.20	40.30
Solon Mills, Ill.	55.8	30.00	41.10
Belden, Ill.	59.4	31.60	42.70
Hebron Siding, Ill.	61.8	32.40	43.50

*[App. Sh. 2] **Bases prescribed for other types of fares:*

Subject to a minimum of 25 cents per trip in connection with all types of fares:

Between all points in the suburban area, one-way fares shall be based on 3.6 cents per mile, round-trip fares shall be 180 percent of the one-way fares, and 10-trip fares shall be 5 times the round-trip fares.

Between Chicago Union Station, on the one hand, and all other points in the suburban area, on the other, 25-trip fares shall be 11½ times the round-trip fares, and weekly and 46-trip commutation fares, respectively, shall be 25 and 90 percent of the unrestricted monthly fares, subject to a maxima of 6 and 23 times the round-trip fares.

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CORRECTED ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 31st day of October, A. D. 1958.

No. 31742

CHICAGO INTRASTATE SUBURBAN FARES OF MILWAUKEE RAILROAD

No. 11703

IN THE MATTER OF INTRASTATE RATES WITHIN STATE OF ILLINOIS

This proceeding having been further heard, and full investigation of the matters and things involved having been made, and the Commission having, on the date hereof, made and filed a report on further hearing containing its findings of fact and conclusions thereon, which report, together with the prior report, 297 I.C.C. 353, is hereby referred to and made a part hereof:

It is ordered, That the respondent herein be, and it is hereby, notified and required to cease and desist, on February 6, 1959, from practicing the undue, unreasonable, and unjust discrimination against and undue burden on interstate commerce found to exist in said report;

It is further ordered, That said respondents be, and it is hereby, notified and required to establish, on February 6, 1959, upon not less than 10 days' notice to this Commission and to the general public by filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply for intrastate travel between points in the respondent's Chicago, Ill., suburban area within the State of Illinois, fares no lower than the bases prescribed in said report;

It is further ordered, That the outstanding orders in No. 11703, be, and they are hereby, modified so as to permit the establishment and maintenance of intrastate fares within said suburban area on the basis so prescribed.

And it is further ordered, That this order shall remain in effect until the further order of the Commission.

By the Commission.

HAROLD D. MCCOY,
Secretary.

(Seal)

APPENDIX D.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

[Title omitted]

ORDER STAYING INJUNCTION, ETC.—June 18, 1956

This cause coming on to be heard on motion of Chicago, Milwaukee, St. Paul and Pacific Railroad Company (herein referred to as "the Milwaukee Road") one of the defendants herein, for the entry of an order staying the injunction prescribed by decree of this court entered June 14, 1956, pending the hearing of said cause on appeal before the Supreme Court of the United States, it appearing to the court that due and proper notice of the time and place for presentation of said motion has been served on all of the attorneys of record and it further appearing to the Court that Notice of Appeal from the decree entered by this Court on June 14, 1956, has been duly served and filed and the Court being fully advised in the premises,

IT IS ORDERED:

1. The injunction prescribed by decree of this Court entered June 14, 1956, is stayed pending disposition of the appeal from that decree, heretofore taken to the Supreme Court of United States, and subject to the conditions below set forth.

2. The excess fares collected by the Milwaukee Road after April 20, 1956, pursuant to order of the Interstate

Commerce Commission set aside by the decree, shall be impounded and held by the Milwaukee Road in a separate fund so that in the event the decree is affirmed, or the appeal therefrom is dismissed or discontinued, the excess fares may be refunded to the persons who paid them. The Milwaukee Road shall issue suitable coupons or other evidence to such persons showing their payment of the excess fares.

3. If the decree is reversed and injunction dissolved, the Milwaukee Road shall retain the impounded excess fares and may transfer them to its general funds.

4. If the decree is affirmed or the appeal is dismissed or discontinued, the Milwaukee Road shall post immediately in its suburban stations, notice that refund will be made of the excess fares to the persons who have paid them.

5. Six months after the posting of such notice, the Milwaukee Road shall file a report in this court setting forth the total amount of the excess fares impounded, the total amount of refunds made therefrom, and the balance of the impounded excess fares then unclaimed. At the same time the Milwaukee Road shall deposit with the Clerk of this Court the amount of such unclaimed balance.

6. Thereupon, upon petition of plaintiffs, and evidence showing reasonable expenses (including reasonable attorneys' fees) incurred by each of the plaintiffs in the proceeding before the Interstate Commerce Commission, reviewed in this case, in prosecuting this case in this Court, and in connection with the appeal from the decree herein, the Court shall order that the amount of said reasonable ex-

penses shall be paid to plaintiffs from the unclaimed balance of the impounded excess fares. Any remaining balance shall be retained by the Clerk subject to such disposition as this Court may direct.

7. The Court retains jurisdiction of this case to enter such further orders as may be required to carry this order into effect.

ENTER:

Elmer J. Schnackenberg, Circuit Judge, Philip L. Sullivan, Judge, Walter J. La Buy, Judge.

Dated: June 18, 1956